IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NOS. 75 AND 82 OF 1997.

FIRST APPEAL NO. 75 OF 1997.

1. The Special Land Acquisition Officer (North), Irrigation Department, Mapusa.
2. The Executive Engineer, Works Division VIII, Irrigation Department, T.I.P., at Mulgao (P.P.), Assonora, Goa. ... Appellants.

Versus

Shri Satyawan Surba Dessai, r/o Nanora, P.O. Assonora, Latambarcem, Goa. ... Respondent.

FIRST APPEAL NO. 82 OF 1997.

1. Special Land Acquisition Officer, Irrigation Department, Morod, Mapusa.
2. The Executive Engineer, Works Division VIII, Irrigation Department (T.I.P.), at Mulgao (P.O.), Assonora, Goa. ... Appellants.

Versus

Shri Ganpath Y. Khanolkar (since deceased represented by his legal heirs):
1a. Smt. Pramila G. Khanolkar, widow.
1b. Shri Mangaldas G. Khanolkar, son.
1c. Smt. Maya Mangaldas Khanolkar, wife of No. 1b.
1d. Shri Sainath G. Khanolkar, son.
1e. Smt. Sradha Sainath Khanolkar, wife of 1d.
1f. Shri Nilesh Ganpat Khanolkar, son.
all r/o H. No. 101, Kanolwada, Nanora, P.O. Assonora. ... Respondents.

Mr. H.R. Bharne, Government Advocate for the Appellants in both Appeals.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe,

Advocate for the Respondents in both Appeals.

Coram : P.V. HARDAS, J.

Date : 30th January 2004.

ORAL JUDGMENT.

Since these two appeals arise in respect of the lands of the respondents acquired under the same Notification and the facts being similar, these appeals are being decided by this common Judgment.

2. The appellants, by these appeals, question the Judgment and Award passed by the Additional District Judge, Mapusa, dated 21st March 1997, in Land Acquisition Case Nos. 172 and 148 of 1990 respectively, partly allowing the reference and fixing the market value of the acquired lands at Rs. 6/- per square metre. The facts in brief, as are necessary for the decision of the appeals, are set out hereunder:

3. By Government Notification No. 22/38/84-RD, dated 2nd March 1984, issued under Section 4 of the Land Acquisition Act and the subsequent declaration under Section 6, the Government acquired the lands belonging to the respondents for the purpose of construction of left bank main canal of Tillari Irrigation Project at Latambarcem, Bicholim. The acquired property in First Appeal No. 75 of 1997 is surveyed under Nos. 820/1(B), 820/9(Part), 820/10(Part), 820/11(Part) and 820/12(Part)

having an area of 9185, 30, 175, 75 and 10 square metres respectively. The respondent was paid compensation at the rate of Rs. 2/- per square metre in respect of the property surveyed under No. 820/1(B) and at the rate of Rs. 3/- per square metre in respect of the other properties.

4. In First Appeal No. 82 of 1997 the acquired property is surveyed under No. 820/1(C) and the area acquired by the Government is 3200 square metres. The respondents were paid compensation at the rate of Rs. 2/- per square metre.

5. The respondents in both the appeals being aggrieved by the inadequate compensation filed applications before the Special Land Acquisition Officer for making a reference under Section 18 of the Land Acquisition Act. In the said applications, the respondents claimed Rs. 20/- per square metre as compensation.

6. On the Land Acquisition Officer making a reference, the learned trial Court framed two issues. The first was whether the respondents herein prove that the market value of the acquired lands was Rs. 20/- per square metre. The second issue was what reliefs were the respondents entitled to.

7. In First Appeal No. 75 of 1997, the respondent examined himself as A.W.1 and relied on the sale instance at Exhibit A.W.1/A. In the cross-examination he had admitted that in the year 1983 he had purchased the acquired land from the Marathe Family at the rate of 0.56 paise. He further stated that it was sold at that rate as they were the tenants of the property. The learned reference Court, after appreciating the evidence of A.W.2, who was examined as the expert, found that the expert A.W.2 had assessed the market value of the acquired land on the basis of his personal opinion. The learned reference Court, therefore, held that on the basis of the evidence, it was not possible to come to a definite conclusion that the market value of the acquired land would be Rs. 12/- per square metre at the time of acquisition. The learned trial Court after appreciation of the evidence of the parties came to the conclusion that the valuation of the land done by A.W.2 appeared to be on the higher side while the compensation awarded by the Government was on the lower side. The learned reference Court also found that the compensation at the rate of Rs. 20/- per square metre, as claimed by the respondents herein, was also on the higher side. the learned reference Court on taking into consideration the location and the other civic amenities of the acquired land, assessed the market value of the acquired land at Rs. 6/- per square

metre. The learned reference Court, accordingly, passed the Judgment and Award.

8. In First Appeal No. 82 of 1997, the respondents examined respondent 1b as A.W.1. He relied on the sale instance at Exhibit A.W.1/A. He also relied on the sale instance dated 23rd June 1986, at Exhibit A.W.1/B. The respondents also examined expert A.W.2 Navelkar, who assessed the value of the land at Rs. 12/- per square metre. The respondents also examined A.W.3 Marathe, who has proved the sale instance at Exhibit A.W.1/B. For the same reasons as recorded, the learned reference Court partly allowed the reference and assessed the market value of the land at Rs. 6/- per square metre.

9. Mr. Bharne, the learned Government Advocate appearing on behalf of the appellants, has submitted that the market value, as determined by the reference Court, was positively on the higher side and the learned reference Court ought to have dismissed the reference instead of holding the market value at Rs. 6/- per square metre. He has further urged that since no development activity has taken place, the learned reference Court was not right in enhancing the compensation on the ground that the land was possessing potential value. For this purpose Mr. Bharne has

placed reliance on the Judgment of the Supreme Court in **Land Acquisition Officer, Hyderabad and others v. Male Pullamma and others,** (1996) 8 S.C.C. 247.

10. Undisputedly the acquired land was at a distance of about 700 metres from the main Bombay-Goa Highway. A market was situated at a distance of about 1 kilometre from the acquired land. There was a primary school at a distance of about 1 kilometre. There was a primary health centre at a distance of about 3 kilometres. The learned reference Court has not relied on the sale instance nor has it relied upon the valuation done by the witness. The learned reference Court has enhanced the compensation taking into consideration the location of the acquired land, other civic amenities available in the vicinity of the acquired land and the potentiality for cashew plantation in the acquired land. Admittedly, in these cases, in the acquired land there were cashew trees. The learned reference Court apparently was impressed by the situation of the land, which was near the highway and the civic amenities which were available. In that background, therefore, the learned reference Court enhanced the compensation and determined the market value at Rs. 6/- per square metre. It was not only that the land had building potential. Therefore, according to me, the decision of the Supreme Court

relied by Mr. Bharne does not apply to the facts of the present cases.

11. I have given my anxious consideration to the submissions of the learned counsel for the appellants and, according to me, the Judgment and Award of the reference Court does not warrant any interference. The reference Court has given reasons, which can be sustained on the basis of the material on record for determining the market value of the acquired land at Rs. 6/- per square metre. The appeals are, therefore, without any merit and are, accordingly, dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

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